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10/578,089

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Baudry Jacquet

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EXAMINER

DAVIS, DEBORAH A

ART UNIT

PAPER NUMBER

1655

MAIL DATE

DELIVERY MODE

09/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/578,089

Applicant(s)

JACQUET, BAUDRY

Examiner

DEBORAH A. DAVIS

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9 and 11-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9 and 11-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/IS/D)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 10-30-06 and 11-17-06

DETAILED ACTION

Claims 9-25 are under consideration for examination.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 that recite metallic compounds being in the form of "complexes" is vague because it is unclear as to what the metes and bounds of this limitation entails. It is unclear if "complexes" read on metallic compounds being mixed with other ingredients and/or compounds or metallic compounds that bind with other compounds and/or ingredients in a composition.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, and 11-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winston et al (WO 02/100329) in view of Shyam K. Gupta (US 2004/0105894).

A method for treating conditions and/or imbalances of the skin, skin appendages and/or overweight conditions in a human body comprising the oral administration of a combination product comprising a first composition (a) containing a green tea extract, vitamin C, and optionally at least one metallic compound selected from zinc, chromium and a mixture thereof, and a second composition (b) containing at least one metallic compound selected from iron, copper, zinc, chromium and a mixture thereof, on the condition that zinc and iron are not simultaneously present in the same composition, wherein compositions (a) and (b) being separately or consecutively administered to said human body.

The reference of Winston et al beneficially teaches a dietary nutritional supplement which comprise of a two-part composition, a lipid-soluble portion in a soft gel cap form and a water-soluble portion in a hard shell capsule or tablet form (page 11, lines 10-31, e.g.). The hard shell capsule/tablet comprise of Vitamin C (200mg) and Green Tea Extract (100mg) as active ingredients, which the examiner interprets as composition (a). The soft gel capsule comprise of mixed tocopherols that can be replaced by or be in combination with zinc (page 14, lines 9-11, page 15, Example 1 and Example 2, e.g.). The examiner interprets the soft gel capsule as the second composition (b). The presence of zinc and iron are not in the same composition and the compositions (a) and (b) can be taken consecutively or separately administered at different times of the day or spread out throughout the day (page 11, lines 20-31, e.g.). The zinc and tocopherols can be mixed together in a soft gel capsule of composition (b), therefore it appears to be complexed. The cited reference discloses that compositions

(a) and (b) are designed to help the body resist the effects of the aging process (abstract, page 3, lines 4-12, e.g.). Therefore, the cited compositions would treat conditions of the skin, as claimed.

The method of Winston et al., does not include the teaching of iron or copper as ingredients in compositions (a) or (b).

The reference of Gupta beneficially teaches that trace metals such as iron, copper and zinc are necessary for the proper functioning of superoxide dismutase (SOD) and other deactivators of active-oxygen molecules which cause aging of skin and other skin disorders (paragraph 0028-0029 and abstract, e.g.).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further include any one or combination of trace metals such as iron or zinc, and/or copper taught by Gupta, into the composition taught by Winston based on the beneficial teaching that they are necessary for the proper functioning of superoxide dismutase, which is associated with aging of skin. The adjustment of particular conventional working conditions (e.g. suitable dosages and weight percentages of the instant ingredients) is deemed merely a matter of judicious selection and routine optimization, which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of the evidence to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBORAH A. DAVIS whose telephone number is (571)272-0818. The examiner can normally be reached on 8-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Deborah A. Davis
Patent Examiner, AU 1655
August 2008

/Christopher R. Tate/
Primary Examiner, Art Unit 1655